

## REMARKS

This is intended as a full and complete response to the Final Office Action dated November 13, 2008, having an extended period for response set to expire on March 13, 2009. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-45 are pending in the application and remain pending following entry of this response. Applicants submit that the amendments do not introduce new matter.

Further, Applicants are not conceding in this application that those amended (or canceled) claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the claimed subject matter. Applicants respectfully reserve the right to pursue these (pre-amended or canceled claims) and other claims in one or more continuations and/or divisional patent applications.

### Claim Rejections - 35 U.S.C. § 112

Claims 37-45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner states that the claims recite “machine readable medium” which the Examiner asserts is not explicitly supported in the specification. Applicants believe the Examiner may have meant to refer to claims 37-42, however, as claims 43-45 are directed to methods operations.

Claims 37-42 have been amended to recite “memory unit having software codes stored thereon...” Support for these amendments is in paragraph [0115]. Accordingly, Applicants respectfully request withdrawal of this rejection.

### Claim Rejections - 35 U.S.C. § 101

Claims 37-45 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Again, Applicants believe the Examiner may have meant to refer to claims 37-42.

Claims 37-42 refer to a “memory unit having software codes stored thereon...”

Applicants respectfully submit that a memory unit is an article of manufacture and, as such, Applicants submit these claims are directed to statutory subject matter.

Claim Rejections - 35 U.S.C. § 102

Claims 1-4, 8-11, 16, 18-21, 24-25, 29-31, 33-34, 37-40 and 43 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Akella et al.* (U.S. Publication 2003/0202492, hereinafter, "*Akella*").

Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

In this case, *Akella* does not teach each and every element of the claims. For example, *Akella* does not disclose "partitioning, at an access point, a control channel used for transmitting control information into a plurality of subchannels, each subchannel being operated at a specific data rate," "selecting, for each of at least two user terminals, one of the subchannels to be used for transmitting control information from the access point to the respective user terminal, based on one or more selection criteria," and "transmitting control information from the access point to a particular user terminal on a particular subchannel selected for the respective user terminal," as recited in claim 1.

As submitted in a previous Office Action, Applicants respectfully submit that the Examiner has misconstrued the teachings of *Akella*. For example, the Examiner refers to paragraphs [0054]-[0056] of *Akella* as teaching *partitioning a control channel into subchannels*, as recited in the claims. Applicants respectfully submit, however, that these paragraphs do not teach partitioning a control channel into subchannels but, rather, teach an algorithm for "assigning channels to subchannels." In particular, the algorithm helps balance traffic by distributing channels between Binary Phase Shift Keying (BPSK) In Phase (*I*) and Quadrature

Phase ( $Q$ ) subchannels, but the algorithm does not partition a control channel into subchannels operated at different data rates and selected for different user terminals.

If it is the Examiner's position that the  $I$  and  $Q$  subchannels are analogous to the claimed partitioned subchannels, Applicants submit that this construction fails for a number of reasons. First off, the  $I$  and  $Q$  subchannels are Binary Phase Shift Keying (BPSK) In Phase ( $I$ ) and Quadrature Phase ( $Q$ ) subchannels, not subchannels partitioned from a control channel, as recited in the claims. Partitioned subchannels may include, for example, distinct Forward Control Channel (FCCH) segments partitioned from an FCCH, as described in paragraph [0108].

Further, the claims recite "selecting, for each of at least two user terminals, one of the subchannels to be used for transmitting control information from an access point to the respective user terminal." In contrast, *Akella* teaches only assigning different control channels to the  $I$  and  $Q$  subchannels for transmissions between a single user terminal and a base station (see, for example, paragraph [0036]). In other words, the  $I$  and  $Q$  subchannels are neither partitioned from a control channel nor are any one of them "selected to be used for transmitting control information from an access point to" a respective user terminal.

For at least these reasons, Applicants respectfully submit that *Akella* does not teach each and every element of claim 1. Claims 9, 20, 25, 30, and 37 recite similar elements that are also not taught in *Akella*.

Claims 34, 40, and 43 recite techniques for decoding subchannels that are partitioned from a control channel and transmitted at different data rates to obtain control information for a designated user terminal. As stated above, *Akella* does not teach partitioning subchannels and, as such, certainly does not teach a receiver for decoding such partitioned subchannels.

Accordingly, Applicants respectfully submit claims 1, 9, 20, 25, 30, 34, 37, 40, and 43, as well as their dependent claims, are allowable and respectfully request withdrawal of this rejection.

#### Allowable Subject Matter

Claims 5-7, 12-15, 17, 22-23, 26-28, 32, 35-36, 41-42 and 44-45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants acknowledge and agree with the Examiner's recognition of the allowability of these claims. However, Applicants respectfully submit that, for the reasons given above, all of the independent claims are also allowable. Therefore, Applicants do not elect to re-write these claims in independent form at present.

Conclusion

Therefore, for at least the reasons presented above with respect to all of the pending claims subsequent to entry of this response, Applicants assert that all claims are patentably distinct from all of the art of record. All objections and rejections having been addressed, it is respectfully submitted that this application is in condition for allowance and a Notice to that effect is earnestly solicited. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

**Charge Statement:** For this application, the Commissioner is hereby authorized to charge any required fees or credit any overpayment to Deposit Account 17-0026.

Respectfully submitted, and  
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